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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LOUIS W.,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY OF
LOS ANGELES,

Respondent.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

B214878

(Super. Ct. No. CK71174)

Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26. Stephen Marpet, Juvenile Court Referee. Petition denied.

Law Offices of Katherine Anderson, Victoria Doherty and Caitlin Crary-Taylor for Petitioner.

No appearance for Respondent.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel for Real Party in Interest Los Angeles County Department of Children and Family Services.

Petitioner Louis W. seeks extraordinary relief (Welf. & Inst. Code § 366.26, subd. (1);¹ Cal. Rules of Court, rule 8.452) from the juvenile court's order, made at the 12-month review hearing (§ 366.21, subd. (f)) held three months before the expiration of the 18-month statutory limit for reunification (§§ 361.5, subd. (a)(3), 366.22), terminating family reunification services and setting a hearing pursuant to section 366.26 to consider selection and implementation of a permanent plan for his two dependent children. We deny the petition, finding no merit to Louis W.'s contention the Department of Children and Family Services (Department) did not provide him with reasonable reunification services.

FACTUAL AND PROCEDURAL BACKGROUND

On December 22, 2007 police officers were dispatched to Louis W.'s home after a caller reported that Louis W. was leaving with a butcher knife to threaten a relative. When they arrived, the officers saw an elderly woman lying on the living room floor and were told by a resident of the home that Louis W. had thrown his mother to the ground. When he was ordered by one of the officers to step outside, Louis W. cursed at the officer, assumed a fighting stance, then walked to the kitchen and opened a drawer under the sink, ignoring the officer's commands to stop. The officer believed Louis W. was reaching for a knife and fired a taser dart into Louis W.'s back. The officers placed handcuffs on Louis W., who proceeded to yell incoherently. The officers recovered a steak knife from the kitchen drawer.

Louis W.'s mother confirmed that Louis W. had thrown her to the ground after screaming at her and other relatives without making any sense. T.A., the mother of Louis W.'s children, told the officers that Louis W. was angry because he believed her parents had molested her and might molest his children, so he planned to kill her parents with a butcher knife that day. The officers found a large knife on the floorboard of Louis W.'s car. Louis W. was transported to a hospital where he continued to yell loudly

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

and was uncooperative with hospital staff. Louis W. was placed in restraints and was administered medication in view of his agitated state. Louis W. told one of the officers that he would come looking for him at the police station to fight him, and continued to scream and act aggressively. Despite an additional dose of medication Louis W. continued to threaten the officers, attempted to remove his restraints, and pulled off the wires to a monitor that had been placed on him.

On December 26, 2007 a social worker for the Department went to the home where Louis W. lived with T.A. and the couple's six-year-old daughter S.W. and three-year-old son D.W. T.A. confirmed the incident of December 22, 2007 and told the social worker that Louis W. had also threatened to kill T.A. with a knife four months earlier. T.A. told the social worker she would agree to a safety plan whereby she would move with the children into the home of relatives or Louis W. would have to move out of the family home, but added that Louis W. was very controlling and was not likely to agree to either plan. Louis W. admitted the December 22, 2007 incident but attributed his conduct to prescription medication (Xanax) given to him by a friend. Louis W. denied any history of domestic violence, refused to agree to a safety plan for the children, and became increasingly agitated. Louis W. cried, raised his voice, and told the social worker to call the police because he was in violation of a restraining order. Fearing for her safety, the social worker summoned police to assist her in detaining the children. The officer who responded to the social worker's call confirmed Louis W. was in violation of a temporary restraining order issued December 22, 2007 prohibiting him from being within 200 yards of the family home. The children were taken into protective custody.

On December 31, 2007 the Department filed a petition under section 300 to declare the children court dependents. The court ordered the children detained in shelter care with discretion for the Department to release them to any appropriate relative, ordered the Department to provide reunification services to Louis W. and T.A., and continued the case to January 22, 2008 for a pretrial resolution conference.

In a report submitted on January 22, 2008 the Department indicated S.W. told the social worker she had seen Louis W. grab T.A. and hit her in the face, and S.W. did not feel safe with Louis W. T.A. told the social worker she had been in a violent relationship with Louis W. for nine years, and Louis W. sometimes engaged in domestic violence against her in the presence of the children. Louis W. refused to speak with the social worker. The social worker provided Louis W. and T.A. with a list of counseling programs, parenting programs and community resources.

On January 22, 2008 the juvenile court reissued the temporary restraining order against Louis W. and continued the case to January 25, 2008. On February 8, 2008, following another continuance, the Department reported that the children had been placed in the home of a parental aunt and uncle. During his initial visit with the children Louis W. had acted inappropriately, coaching them on where they should prefer to live and telling them he did not do what he is accused of doing. Louis W. was warned that his visits would be terminated if he continued to conduct himself improperly. The court set a mediation hearing for February 28, 2008 and the adjudication hearing for March 20, 2008 in the event the matter was not resolved through mediation. The court appointed Dr. Michael Ward, Ph.D. to conduct a psychological evaluation of the parents and the children. (Evid. Code § 730.)

The parties were unable to reach an agreement through mediation. On March 20, 2008, on request of Louis W.'s counsel, the juvenile court ordered the Department to provide Louis W. with referrals for counseling and parenting programs. The court continued the jurisdiction hearing to March 26, 2008.

On March 26, 2008 the court conducted the jurisdiction hearing as to Louis W.² Louis W. testified he had no recollection of the events leading to the children's detention and attributed his memory lapse to the Xanax medication given to him by a friend to relieve a breakout of hives. Louis W. denied any history of domestic violence. He

² T.A. admitted the allegations of an amended petition and the court sustained the petition as to her.

explained that T.A. has schizophrenia, she had attacked him several times, and he had hit her just once, when she attacked him after he had warned her that he would have to defend himself if she struck him again. Louis W. further testified that he had three jobs, as a custodian for two churches and a maintenance person in a hotel, and had always been gainfully employed. Louis W. added that all of the allegations against him in the dependency petition were untrue and he had always done his best to take care of T.A. and protect his children.

Following brief testimony by the social worker, the attorneys for the Department, for the children and for T.A. argued the petition should be sustained. Counsel for Louis W. stated that “the case probably needs some oversight” but the restraining order against Louis W. should be terminated. The court sustained the dependency petition as amended to allege as against Louis W. that the children were placed at risk by his various acts of domestic violence against T.A. and his violent altercations in the family home including the physical attack on the paternal grandmother on December 22, 2007. The court ordered that the restraining order against Louis W. remain in place and set a contested disposition hearing for May 6, 2008.

On May 6, 2008 Louis W. appeared with a new attorney, who informed the court that Louis W. wished to represent himself. Louis W. told the court he did not think his prior counsel had provided adequate representation, explaining that he had “just found out” that the dependency petition had been sustained against him, and adding that his former counsel had told Louis W. that he intended to call social workers who told lies. The court explained to Louis W. that he would have to fill out forms to enable the court to determine if he was capable of representing himself, and took a brief recess to afford Louis W. an opportunity to complete the forms. When the court reconvened Louis W. explained he had not been able to fill out the forms without a dictionary and agreed to representation by his new court-appointed attorney. The juvenile court admitted into evidence Dr. Ward’s psychological evaluation and continued the contested disposition

hearing to June 6, 2008 to afford the parties an opportunity to review Dr. Ward's report and for a further report from the Department.

In his report, Dr. Ward described Louis W. as an obsessive, controlling and complicated person in need of therapy from a seasoned professional to explore his serious unresolved issues. Dr. Ward stated that he interviewed Louis W. for over five hours and, although Louis W. "may not be quite the monster" described in various reports, there was a legitimate question whether Dr. Ward was perhaps "conned" by Louis W. Louis W. told Dr. Ward he was once involuntarily hospitalized for psychiatric reasons to cover up the fact that he had been beaten by police officers; he was beaten numerous times by police from the time he was in the sixth grade until he became a drug informant; he was a warm, caring and loving person and struck T.A. only in self-defense; and he encouraged T.A. to make friends, but T.A. became jealous of him when she brought female friends to the home. Louis W. ascribed his violent behavior on December 22, 2007 to "three to seven" Xanax pills he took that day. In a "special note," Dr. Ward added that while he was preparing his evaluation the paternal grandmother telephoned him to report that Louis W. had told his sister that he wanted to get a gun "and blow Lia's, John's,³ and my brains out."

The Department's report for the June 10, 2008 disposition hearing indicated the social worker had been unable to contact Louis W. because the telephone number he had provided was no longer in service. The social worker had given Louis W. a list of no-cost or low-cost referrals, but according to the paternal grandmother he was not participating in counseling because he could not afford it.

On June 10, 2008 Louis W. agreed to a disposition plan requiring him to participate in an anger management program and individual counseling to address case issues including domestic violence. The court ordered the Department to assist Louis W. in finding a no-cost or low-cost therapist. The court explained to Louis W. that, because

³ Lia and John are Lynette K. and John K., the maternal aunt and uncle with whom the children were placed.

he was gainfully employed, a licensed therapist would require some payment by Louis W. The court continued the matter to August 5, 2008 for the six-month review hearing. (§ 366.21, subd. (e).)

The Department's report for the six-month review hearing indicated that until recently Louis W. had demonstrated an angry and defensive attitude and had been uncooperative with the social worker. On June 18, 2008 the social worker gave Louis W. a list of referrals for counseling, but Louis W. did not enroll in any of the programs on the list. Instead, he enrolled in another program (at Pavillion Healthcare Services, Inc.) that he found on his own. On July 30, 2008 Dezella Banks, Louis W.'s counselor at Pavillion Healthcare Services, Inc. told the social worker Louis W. was attending the program but he was not "getting it" and had deep rooted issues which she was incapable of handling. Banks told the social worker that she was not a licensed therapist and she would refer Louis W. to another agency better equipped to deal with his problems. On July 31, 2008 Banks referred Louis W. to South Bay Mental Health for counseling with a licensed therapist. During a telephone conversation on August 1, 2008 Louis W. told the social worker he was angry, felt as if he might have a heart attack, and wanted to sue everyone because he had been told by Pavillion Healthcare staff that its counselors were not licensed. Louis W. was having monitored visits with the children twice a week at the Department's office and had missed five visits in the past six months. The Department recommended that Louis W. receive an additional period of reunification services.

On August 5, 2008 Louis W. requested that the six-month review hearing be set for a contest on the issue of liberalization of his visits with the children. The court set the contested hearing for August 28, 2008.

In a report for the contested six-month hearing the Department indicated Louis W. had not enrolled in a proper counseling program but had stated that he had recently obtained insurance through his employer, had contacted a therapist, and was waiting for a return call. Louis W. had twice hung up on the social worker after becoming angry during telephone discussions to make visitation arrangements. S.W. told the social

worker she did not want visits with Louis W. without a social worker present because “he is a little mean” and might hit S.W. and D.W. T.A.’s therapist, Melanie McAllister, had written to the social worker to report she had learned from T.A. that Louis W. often stole prescription medication from friends and was hiding an alcohol and marijuana addiction. McAllister opined the children would not be safe with Louis W. even in a monitored environment, and considered that he was in need of extensive long-term treatment for his problems.

Louis W. did not appear for the contested six-month review hearing on August 28, 2008, according to his attorney because he had started a new job and could not miss work. Counsel added that Louis W. had started individual counseling, with payment through his employment health insurance. Counsel argued that, because he had not received referrals for appropriate programs, Louis W. should be granted unmonitored visitation and the Department should promptly find him the right program. Counsel for the Department and for the children objected to any unmonitored contact by Louis W. with the children. The court denied the request to liberalize visitation, finding there was ample evidence, including the contents of McAllister’s letter, of a risk to the children from unmonitored contact with Louis W. The court further found that Louis W. was in partial compliance with his case plan and the Department had provided reasonable reunification services. The court continued the case to February 3, 2009 for the 12-month review hearing. (§ 366.21, subd. (f).) The court ordered the Department to provide Louis W. with an updated list of no-cost or low-cost referrals for anger management programs, and advised Louis W.’s counsel that she could walk the matter back to the juvenile court if the Department did not provide an updated referral list within the next 30 days.

On December 8, 2008 the Department filed an ex parte application seeking to change the location of Louis W.’s visits with the children from its Torrance office to the Lakewood office for security reasons. The Department reported that Louis W. had engaged in menacing behavior toward the social worker during recent visits. He was visibly angry, stared at the social worker while shaking his leg, and accused her of filming

the visit on her cell phone to make him look bad to the court. Louis W. also persisted in discussing the case in front of the children, and when he was admonished by the social worker he became angry, argued with the social worker, told her not to “push [his] buttons,” characterized the Department’s reports as “total lies,” and called the Department “evil.” The Department further indicated that John K., the children’s caretaker, had telephoned the social worker to report that the police had come to his home to investigate Louis W.’s claim that D.W. had stated John K. had put D.W.’s underwear in D.W.’s mouth. Also, Louis W.’s therapist had called the social worker to report that she was discharging Louis W. from therapy because he was “not getting it,” he had intimidated her during visits, and he had not paid her in five weeks. The therapist further suggested a security guard should be present during any visits by Louis W. with the children because “this is an accident waiting to happen.” The Department reported Louis W. had grown an unkempt beard and consistently wore the same clothes, indicating he might be decompensating and presenting a risk to the safety of the children and the social worker. On December 8, 2008 the court ordered that further visits take place at the Department’s Lakewood office where security was higher. The court and observed that visits in a therapeutic setting may be “the next thing that will happen.”

In its report for the February 3, 2009 12-month review hearing the Department indicated Louis W. had attended an anger management program from September 11, 2008 until he was discharged on December 3, 2009. The counselor reported that Louis W. had not made any payments and was not benefitting from the program. Louis W. did not actively participate during sessions and instead persisted in complaining about the social worker and the Department, was unwilling to accept any responsibility for his behavior, and blamed everyone but himself for his problems. Louis W. had not visited the children since the visitation was moved to the Department’s Lakewood office. The children were thriving in their placement and Lynette K. and John K. hoped to adopt them. The Department recommended the juvenile court terminate reunification services and set a hearing pursuant to section 366.26.

Louis W. appeared for the 12-month review hearing on February 3, 2009 but was excused from the courtroom because he refused to take his hat off. Louis W.'s counsel informed the court that Louis W. was homeless and stated she was unaware of any address where he could be reached. The hearing was continued to March 23, 2009 for a contest by Louis W.⁴

In a further report for the contested 12-month review hearing the Department stated it had been unable to locate Louis W. The paternal grandmother had told the social worker she was uncertain whether Louis W. was still in California. Louis W. had not made contact with the children since November of 2008. On March 19, 2009 Lynette K. told the social worker that she heard Louis W. had been hospitalized a few weeks earlier.

The contested 12-month review hearing commenced on March 23, 2009 with the testimony of Angela Matthis, who had serviced the case since March of 2008. Matthis testified that, after Louis W. was discharged from therapy with an unlicensed therapist in July of 2008, she provided him with a list of referrals for anger management counseling. All of the therapists on the list were licensed and offered services on a sliding-scale basis based on ability to pay. Matthis had been unable to find any therapists who offered services free of charge. After Matthis provided Louis W. with the list of referrals he found a therapist through his insurance, but later the therapist discharged Louis W. for his failure to pay for the services and because he was not "getting it." Matthis lost contact with Louis W. after November of 2008 and did not thereafter provide Louis W. with further referrals for therapy. Matthis had no telephone number for Louis W. and had just found out he was homeless. Matthis did not give bus passes to Louis W. and Louis W. never asked for a bus pass.

At the conclusion of Matthis' testimony counsel for the Department requested that the court terminate reunification services for Louis W. Counsel for the children joined in the Department's request, urging there was clearly not a substantial probability the

⁴ T.A. requested the setting of a section 366.26 hearing to select legal guardianship or adoption by Lynette K. and John K. as the permanent plan for the children.

children could be safely returned to Louis W. within the three months remaining before the case reached the 18-month statutory limit for reunification, and observing that both children remained fearful of Louis W. Counsel for Louis W. requested that he be given an additional period of reunification, urging that the Department had not provided him with reasonable services and Louis W. had substantially complied with his case plan.

After hearing argument, the court announced its decision to terminate reunification services. The court found the Department had provided reasonable reunification services, the return of the children to Louis W. could create a substantial risk of detriment to their well-being, and there was not a substantial probability the children could be returned to Louis W.'s custody by the 18-month date. The court then set the matter for a hearing pursuant to section 366.26.

CONTENTION

Louis W. contends the court improperly terminated reunification services because there was not substantial evidence to support the juvenile court's finding the Department provided reasonable reunification services between the six-month and 12-month dates.

DISCUSSION

We review the juvenile's court's finding that reasonable reunification services were offered under the substantial evidence standard. (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.)⁵ We recognize that in most cases more services might have been provided, and the services that were provided can often be imperfect. The standard, however, is whether the services provided were reasonable under the circumstances. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

⁵ When we review the juvenile court's findings under the substantial evidence standard, we inquire only whether there is any evidence, contradicted or uncontradicted, that supports the court's determination. We resolve all conflicts in support of the determination, indulge in all legitimate inferences to uphold the findings and may not substitute our deductions for those of the juvenile court. (*In re Katrina C.* (1988) 201 Cal.App.3d 540; *In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

Substantial evidence supports the juvenile court's finding the services offered to Louis W. were reasonable under the circumstances of this case. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416-417; *In re Jasmon O.* (1994) 8 Cal.4th 398, 424-425.) The record, as summarized above, establishes that the social worker immediately identified the problems that led to the loss of custody and promptly provided Louis W. with referrals for his court-ordered programs, including counseling with licensed therapists. The record further shows that, notwithstanding the social worker's referrals and other efforts to assist him, Louis W. failed to take advantage of the services offered. Louis W. suggests it was the social worker's responsibility to ensure his enrollment in counseling with a licensed therapist, but this is not the law. Reunification services are voluntary, and the social worker is not required to "take the parent by the hand and escort him or her to and through classes or counseling sessions." (*In re Michael A.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.)

The record shows that, during the contested six-month review hearing on August 28, 2008, Louis W.'s counsel complained that the Department had not provided Louis W. with adequate referrals.⁶ The juvenile court ordered the Department to provide Louis W. with an updated list of referrals, and invited counsel for Louis W. to walk the matter back to the court if an updated referral list was not provided within 30 days. Counsel did not walk the matter back to the court, and the record shows that Louis W. began to attend an anger management program two weeks after the August 28, 2008 hearing. Nor did Louis W. or his attorney ever tell the social worker that Louis W. could not pay for this program; Louis W. never even requested a bus pass. Rather, the record shows that Louis W. failed to take advantage of the program. Louis W. was discharged from the program on December 3, 2008, and just five days later the Department found it necessary to return to the juvenile court to restrict Louis W.'s visitation due to his threatening conduct directed to the social worker who monitored his visits with the children.

⁶ Counsel also told the court that Louis W. had recently obtained new employment and had begun to participate individual counseling through his health insurance.

Louis W. did not thereafter visit or even contact the children, and his whereabouts became unknown even to his attorney and his mother.

The record as a whole establishes that, despite the Department's efforts to assist Louis W. to remedy the problems leading to his loss of the children's custody, Louis W. consistently demonstrated an inability to take advantage of the services offered to him by the Department.

DISPOSITION

Because substantial evidence supports the juvenile court's order to conduct a hearing pursuant to section 366.26, the petition is denied on the merits.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.